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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

13 SECURITIES AND EXCHANGE COMMISSION,

Case No. C 08-03517 CW

14 Plaintiff,

SECURITIES AND EXCHANGE
 COMMISSION'S STATEMENT RE
 ORDER TO SHOW CAUSE

15
 16 vs.
 17 ROBERT C. BROWN, JR. AND TREBOR COMPANY
 18 (AKA TREBOR INVESTMENT COMPANY, TREBOR
 SEMINARS, TREBOR GROUP AND TREBOR GROUP
 FUND),

DATE: August 5, 2008
 TIME: 2:00 p.m.
 PLACE: Courtroom 2, 4th Floor

19 Defendants,
 20 and

21 DUANE EDDINGS, CDC GLOBAL, INC. AND WISE
 INVESTORS SIMPLY EXCEL, LLC,

22 Relief Defendants.

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1 **I. INTRODUCTION**

2 Plaintiff Securities and Exchange Commission (“Commission”) submits this statement re
3 order to show cause to provide the Court with information developed since the entry of the temporary
4 restraining order on July 23, 2008. The Commission also submits this statement to describe how the
5 legal standard for granting a preliminary injunction, which is slightly different than the standard for
6 granting a restraining order, has been satisfied.

7 **II. PROCEDURAL HISTORY**

8 On July 23, 2008, the Commission filed a complaint against defendants and relief defendants
9 alleging various violations of the federal securities laws. [Docket No. 1.] Contemporaneously with
10 the filing of the complaint, the Commission also filed an *ex parte* application for a temporary
11 restraining order along with a memorandum of points and authorities and other supporting
12 documentation (collectively, the “Application”). [Docket Nos. 2-14.] On July 23, 2008, the Court
13 granted the Commission’s requested relief with certain modifications (the “TRO”). [Docket No. 17.]
14 The Court also issued an order to show cause why a preliminary injunction should not issue that
15 continues the equitable relief granted by the Court (the “OSC”) and set a hearing on the OSC for
16 August 5, 2008 at 2:00 p.m. [Docket No. 18.]

17 **III. ADDITIONAL FACTS**

18 In addition to the facts set forth in the Commission’s memorandum of points and authorities
19 in support of the Application, there are a few additional facts of which the Court should be aware.

20 Defendants Robert C. Brown, Jr. (“Brown”) and Trebor Company (“Trebor”) were served on
21 July 24, 2008, with the following documents related to this litigation: the summons, complaint, all
22 papers submitted in support of the Application, the TRO, and the OSC. Declaration of Mark P.
23 Fickes in Support of Securities and Exchange Commission’s Statement Re Order to Show Case
24 (“Fickes Decl.”), Exs. 1-4; *also see*, Docket Nos. 20-23. Relief Defendants Duane Eddings
25 (“Eddings”), CDC Global Inc. (“CDC”), and Wise Investors Simply Excel, LLC (“WISE”) were
26 served on July 29, 2008, with the following documents related to this litigation: the summons,
27 complaint, all papers submitted in support of the Application, the TRO, and the OSC. Fickes Decl.,
28 Exs. 5-10; *also see*, Docket Nos. 24-29.

1 On July 28, 2008, the Commission's counsel in this matter sent Eddings an email attaching
 2 the TRO and OSC. Fickes Decl., ¶ 1. Eddings is the registered agent for service of process for CDC
 3 and WISE. *Id.* On July 28, the Commission's counsel also spoke with Eddings, who is not
 4 represented by counsel, about the court proceedings. *Id.*, ¶ 2. Eddings was advised that the hearing
 5 on the OSC would take place on August 5 at 2:00 p.m. *Id.*, ¶ 2. Eddings stated that he would be out
 6 of town and did not plan to attend the hearing. *Id.*, ¶ 5. Finally, Eddings was advised that if he
 7 wished to state his position on the OSC or request a continuance of the hearing, he would have to file
 8 the appropriate documents with the Court. *Id.*, ¶ 5.

9 As of the filing of this statement, the Commission has not been served with an opposition to
 10 the OSC by any of the Defendants or Relief Defendants. *Id.*, ¶ 6.

11 **IV. ARGUMENT**

12 **A. Preliminary Injunction**

13 Upon a "proper showing" that defendants have violated the federal securities laws, the
 14 Commission may obtain a temporary injunction. *See*, Section 21(d) of the Securities Exchange Act
 15 of 1934 ("Exchange Act"), 15 U.S.C. § 78u(d); and Section 209(d) of the Investment Advisers Act of
 16 1940 ("Advisers Act"), 15 U.S.C. § 80b-9(d). In particular, Section 21(d) of the Exchange Act
 17 provides in relevant part:

18 Whenever it shall appear to the Commission that any person is engaged or is about to
 19 engage in acts or practices constituting a violation of any provision of this title, [or] the
 20 rules or regulations thereunder, . . . it may in its discretion bring an action in the proper
 21 district court of the United States . . . to enjoin such acts or practices, and upon a proper
 22 showing a permanent or temporary injunction or restraining order shall be granted
 23 without bond.

24 15 U.S.C. § 78u(d). *See also* 15 U.S.C. § 80b-9(d).

25 A preliminary injunction enjoining violations of the securities laws is appropriate if the
 26 Commission makes a substantial showing of likelihood of success as to both a current violation and
 27 the risk of repetition.¹ *SEC v. Cavanagh*, 155 F.3d 129, 132 (2d Cir. 1998), citing *SEC v. Unifund*

28 ¹ When the Court granted the Commission's *ex parte* application for the TRO, it applied a slightly
 29 different standard. At the TRO stage, relief is appropriate upon a showing of *either*: (1) a likelihood
 of success on the merits and the possibility of irreparable injury; *or* (2) serious questions going to the

Footnote continued on next page

1 SAL, 910 F.2d 1028, 1039-40 (2d Cir.1990). The Commission is not required to prove irreparable
 2 injury or the inadequacy of legal remedies, as may be required of a private litigant moving pursuant
 3 to Federal Rule of Civil Procedure 65. Instead, the relief should be granted when the Commission
 4 meets the statutory requirement of showing a likelihood of continued violations of the securities laws,
 5 because the agency appears “not as an ordinary litigant, but as a statutory guardian charged with
 6 safeguarding the public interest.” *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975).
 7 Because the Commission is bringing this action pursuant to its statutory mandate to safeguard the
 8 public interest and to enforce the federal securities laws, irreparable injury is presumed. *See U. S. v.*
 9 *Odessa Union Warehouse Co-Op*, 833 F.2d 172, 174-75 (9th Cir. 1987) (holding irreparable injury
 10 presumed in federal agency action for injunctive relief); *Navel Orange Admin. Comm. v. Exeter*
 11 *Orange Co.*, 722 F.2d 449, 453 (9th Cir. 1983) (same.).

12 As set forth in the Commission’s memorandum of points and authorities in support of the
 13 Application, the Commission is likely to succeed on the merits of its claim that Brown violated the
 14 antifraud provisions of the federal securities laws by misappropriating client assets, making
 15 materially false and misleading statements in connection with the purchase or sale of securities, and
 16 perpetrating a fraud on his investment advisory clients. Moreover, there is good cause to believe that
 17 Brown will continue to violate the federal securities laws. As recently as June 2008, Brown has
 18 solicited money from new investors promising returns of 30% to 40% per month. Brown also
 19 promised an investor a 10% commission on all the money Brown raises from other investors referred
 20 to Brown by that investor. In addition, Brown has a new program instructing investors to open
 21 brokerage accounts in their own names and then provide Brown their online user identification and
 22 passwords to allow Brown to trade online in the investors’ accounts. Finally, Brown has not filed an
 23 opposition to the OSC.

24 In granting the Application, the Court has already found that: (1) the Commission
 25 demonstrated a likelihood of success on the merits, (2) good cause exists to believe that the
 26 defendants have engaged in conduct that violates the federal securities laws, and (3) good cause

27 merits and the balance of hardships tipping sharply in the Commission’s favor. In the context of a
 28 preliminary injunction, the “serious questions” standard is not applicable.

1 exists to believe that defendants will continue to engage conduct that violates the federal securities
 2 laws. *See TRO, ¶¶ 3, 4 and 5.* [Docket No. 17.] Thus, the Court has already applied the legal
 3 standard for granting a preliminary injunction to the facts of this case in issuing the TRO and
 4 determined that Defendants and Relief Defendants must show cause why a preliminary injunction
 5 should not be issued. [Docket No. 18.]

6 Based on the Court's findings in granting the TRO, and based on the failure of Defendants or
 7 Relief Defendants to respond to the OSC, the Commission respectfully requests that the Court issue a
 8 preliminary injunction continuing the relief set forth in the TRO.

9 **B. Other Ancillary Relief**

10 The TRO also froze Brown's accounts as well as accounts held by WISE and CDC.² An asset
 11 freeze is appropriate to prevent waste and dissipation of assets while litigation is pending, and to
 12 ensure their availability for restitution and disgorgement. *E.g., FTC v. H.N. Singer, Inc.*, 668 F.2d
 13 1107, 1112-13 (9th Cir. 1982). Where the Commission has shown that it is likely to succeed on the
 14 merits, the mere possibility of dissipation of assets is sufficient to warrant an asset freeze; the
 15 Commission does not need to show that dissipation has occurred or is imminent. *FSLIC v. Sahni*,
 16 868 F.2d 1096, 1097 (9th Cir. 1989). Finally, a freeze on CDC's and WISE's accounts is appropriate
 17 where they have received ill-gotten gains to which they do not have a superior legal right. *SEC v.*
 18 *Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998).

19 Based on the Court's findings in the TRO, and based on the failure of Defendants or Relief
 20 Defendants to respond to the OSC, the Commission respectfully requests that the Court issue a
 21 preliminary injunction maintaining the order for an accounting, repatriation of assets, expedited
 22 discovery, and preservation of documents.³

23
 24 ² The Court did not grant the Commission's request to freeze Eddings' assets. The Commission is
 25 not seeking reconsideration of that ruling at this time and has not proposed freezing Eddings' assets
 26 in the [Proposed] Preliminary injunction submitted with this statement. The Commission respectfully
 27 requests that the Court's determination be without prejudice to the Commission seeking leave to
 28 freeze Eddings' assets, should additional facts be uncovered in the litigation.

27 ³ In the TRO, the Court ordered an accounting within five Court days of entry of the TRO. *See*, TRO
 28 ¶ VI. Defendants have not complied with this provision.

1 **IV. CONCLUSION**

2 For the reasons set forth by the Commission in the Application, and in the absence of an
3 opposition to the issuance of a preliminary injunction, the Commission respectfully requests that this
4 Court grant the relief requested.

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6 Dated: August 1, 2008

Respectfully submitted,

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8
9 /s/ Mark P. Fickes
10 Mark P. Fickes
11 Jeremy E. Pendrey
12 Attorneys for Plaintiff
13 SECURITIES AND EXCHANGE
14 COMMISSION
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